

IN THE SUPREME COURT OF THE STATE OF DELAWARE

PARIS LAMAR WATERS,	§
	§ No. 671, 2011
Defendant Below,	§
Appellant,	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware, in and
	§ for New Castle County
STATE OF DELAWARE,	§ Cr. ID Nos. 0705019531
	§ 0705011905
Plaintiff Below,	§
Appellee.	§

Submitted: April 13, 2012

Decided: May 9, 2012

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices.

ORDER

This 9th day of May 2012, upon consideration of the briefs of the parties and the record below, it appears to the Court that:

(1) The defendant-appellant, Paris Lamar Waters, filed an appeal from the Superior Court’s November 30, 2011 violation of probation (“VOP”) sentencing order and the Superior Court’s November 30, 2011 order denying Waters’ motion for sentence modification. We find no merit to the appeal. Accordingly, we affirm.

(2) The record before us reflects that, in November 2007, Waters entered a plea of guilty to Assault in the Second Degree and Offensive Touching. He was sentenced to a total of 7 years at Level V, to be

suspended after 2 years for decreasing levels of supervision. Waters did not file an appeal from his convictions. The record also reflects that in July 2009, Waters pleaded guilty to Rape in the Fourth Degree. He was sentenced to 15 years at Level V, to be suspended for 12 months of Level III probation. Waters also did not file an appeal from that conviction.

(3) A contested VOP hearing was held on November 30, 2011. In its VOP sentencing order, the Superior Court continued Waters' sentences for Rape in the Fourth Degree, Assault in the Second Degree and Offensive Touching as previously imposed. The Superior Court also ordered that Waters pay restitution to the Department of Probation and Parole for a vending machine that he damaged while serving time at Level IV and for which he was charged with Criminal Mischief in the Court of Common Pleas.¹ The Superior Court found no reason to modify Waters' sentences and denied his motion for modification on November 30, 2011.

(4) In this appeal from the Superior Court's two November 30, 2011 orders, Waters claims that a) the criminal mischief charge was not relevant to the VOP matter because it ultimately was dismissed; and b) the Superior Court should have sent him to Level III, rather than Level IV, for the VOP.

¹ The record reflects that the Criminal Mischief charge brought against Waters in the Court of Common Pleas was dismissed on November 3, 2011. Ct.Com. Pl. Civ. R. 48(b) (providing that the court may dismiss criminal proceedings on the ground of unnecessary delay in the filing of an information).

(5) Delaware law provides that the Superior Court has the authority to revoke probation and impose sentence on the ground that a probationer has been charged with new criminal conduct.² Even if the charge ultimately is dismissed, the fact that the probationer's conduct has not been as good as required under the conditions of probation is sufficient to have his probationary term revoked.³ Moreover, because a VOP hearing does not constitute a separate criminal prosecution, double jeopardy is not implicated.⁴ To the extent Waters claims that the Superior Court abused its discretion by imposing restitution, he is incorrect. Restitution was mandated under Del. Code Ann. tit. 11, § 4204(c)(9), which requires the Superior Court to impose restitution whenever a victim of a crime suffers a monetary loss as a result of a defendant's criminal conduct. For all of these reasons, we conclude that Waters' first claim is without merit.

(6) Delaware law also authorizes the Superior Court, when a VOP has been established, to impose the full amount of the violator's suspended sentence or any lesser sentence.⁵ This Court will not revoke a sentence imposed by the Superior Court unless it is beyond the maximum allowed by

² *Hawkins v. State*, Del. Supr., No. 315, 2010, Berger, J. (Aug. 25, 2010) (citing *Kurzmann v. State*, 903 A.2d 702, 717 (Del. 2006)).

³ *Id.*

⁴ *Dorman v. State*, Del. Supr., No. 46, 2000, Walsh, J. (Mar. 6, 2001) (citing *United States v. Clark*, 984 F. 2d 319, 320 (9th Cir. 1993)).

⁵ Del. Code Ann. tit. 11, § 4334(c).

law or is the result of vindictive or arbitrary action on the part of the sentencing judge.⁶ In this case, the Superior Court imposed no additional Level V time for Waters' VOP. The Superior Court continued his sentences as previously imposed, with the result that Waters was remanded to Level IV custody. Waters has presented no evidence that the Superior Court sentenced him in excess of the Level V time remaining on his sentence or that the sentence imposed was the result of vindictiveness or arbitrariness. As such, the Court concludes that Waters' second claim also is without merit.

(7) In the absence of any error or abuse of discretion on the part of the Superior Court in sentencing Waters for a VOP, we conclude that the Superior Court also correctly denied Water's motion for modification of his VOP sentence on November 30, 2011.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice

⁶ *Derrick v. State*, Del. Supr., No. 515, 2011, Jacobs, J. (Dec. 21, 2011) (citing *Siple v. State*, 701 A.2d 79, 83 (Del. 1997)).